In the Supreme Court
OF THE
United States

OCTOBER TERM, 1972

No. 72-1125

A. Y. ALLEE, et al., *Appellants*

vs.

FRANCISCO MEDRANO, et al., *Appellees.*

On Direct Appeal from the United States Three-Judge District Court for the Southern District of Texas

MOTION FOR LEAVE TO FILE BRIEF
and
BRIEF FOR AMICUS CURIAE MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

MARIO G. OBLEDO,
VILMA S. MARTINEZ,
SANFORD JAY ROSEN,
Mexican American Legal Defense and Educational Fund,
145 Ninth Street,
San Francisco, California 94103,
Attorneys for Amicus Curiae.

PERNAU-WALSH PRINTING CO. - 562 MISSION STREET - SAN FRANCISCO, CA 94105

Subject Index

Table of Authorities Cited

Other Authorities

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1972

No. 72-1125

A. Y. ALLEE, et al., *Appellants*

vs.

FRANCISCO MEDRANO, et al., *Appellees.*

On Direct Appeal from the United States Three-Judge District Court for the Southern District of Texas

MOTION OF THE MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The Mexican American Legal Defense and Educational Fund (MALDEF) requested the parties in this case to consent to filing the attached brief amicus curiae out of time. Appellants as well as Appellees have granted their consent[1]

[1]The letters of consent have been filed with the Clerk.

MALDEF was established on May 1, 1968, as a non-profit corporation incorporated under the laws of the State of Texas, primarily to provide legal assistance to Mexican Americans (Chicanos).[2] It is headquartered in San Francisco, with additional offices in San Antonio, Los Angeles, Denver, Albuquerque, and Washington, D.C.

MALDEF, in its efforts to assist the Mexican American community achieve its rights, under law, is actively involved in litigation to challenge the traditional barriers with which Mexican Americans are faced: abridgement of participatory constitutional, civil, and political rights; unequal educational opportunities; discriminatory employment practices; unequal distribution of public services; and law enforcement misconduct.

Courts have recognized that Mexican Americans constitute a separate group which has often been subject to illegal discrimination in our society. Quite recently a federal district court surveyed the situation concerning the Mexican Americans in Texas who were represented by MALDEF.

> Because of long standing educational, social, legal, economic, political and other widespread and prevalent restrictions, customs, traditions, biases and prejudices, some of a so-called *de jure* and some of a so-called *de facto* character, the Mexican-American . . . has historically suffered from, and continues to suffer from, the results and effects of invidious discrimination and treatment in

[2]Currently the word Chicano is used interchangeably with the term Mexican American.

the fields of education, employment, economics, health, politics, and others.[3]

The questions presented in the case before this Court arise out of the deployment of state law enforcement agencies, including the Texas Rangers, during a year long strike which was instituted in 1966 for the purpose of organizing a union for Mexican American farm workers. So significant are these events and resulting issues, that they also have been scrutinized in several non-judicial forums.

After the Texas law enforcement agencies responded in a partisan manner to the organizational efforts of the Mexican American agricultural workers in Starr County, Texas, a series of hearings and investigations conducted by several agencies of the Federal Government looked into these events. The Subcommittee on Migratory Labor of the Senate Committee on Labor and Public Welfare was able to document the continual harassment, physical violence, and brutality to which union organizers and sympathetic employees were subjected. The Subcommittee heard testimony concerning the pattern of conduct by which local and State officials assisted the growers. Law enforcement officials made arrests without legal cause, used physical force far beyond that required under the circumstances, and imposed unlawfully high bail.[4]

---

[3] *Graves v. Barnes*, 343 F. Supp. 704 (Jan. 28, 1972; W.D. Texas) *rev'd in part, aff'd in part, sub nom., White v. Regester*, 93 S.Ct. 2332 (1973). See also *Keyes v. School District No. 1, Denver, Colorado*, 93 S.Ct. 2686 (1973).

[4] Committee on Labor and Public Welfare, United States Senate, *The Migratory Farm Labor Problem in the United States*, 40-41 (1968) [hereinafter cited as *U.S. Senate Report*].

All of these actions were in furtherance of a studied effort to break the strike and to deny the strikers their civil rights.

Indeed, the events in Starr County were so remarkable as to evoke memories of wholesale strike breaking by state and local police and paramilitary forces that preceded enactment of the National Labor Relations Act. With the enactment of the NLRA, the organizational and strike activities of most American laborers were protected by federal statute as well by the Constitution. Consequently, especially because of the pre-emptive force of the NLRA, strike breaking by state and local law enforcement authorities was considerably reduced.[5] But agricultural workers including large numbers of Mexican Americans, are expressly excluded from the protections of the NLRA. Hence, state and local law enforcement officials continue with some frequency to break their strikes and interfere with their organizational activities.

The Texas Advisory Committee to the United States Commission on Civil Rights issued the following report concluding that the legal and civil rights of union organizers and sympathizers in Starr County had been violated by:

1. Physical and verbal abuse by Texas Rangers and Starr County law enforcement officials;

---

[5]See P. Taft and P. Ross, *American Labor Violence: Its Cause, Character, and Outcome,* in 1 Report of the Nat'l Com'n on the Causes and Prevention of Violence, *Violence in America: Historical and Comparative Perspectives,* 221-301 (1969).

2. Failure to bring promptly to trial members and union organizers against whom criminal charges have been alleged;
3. Holding of union organizers for many hours before they were released on bond;
4. Arrest of UFWOC members and organizers on the complaints of growers and packers without full investigation of the allegations in the complaints. In contrast, law enforcement officials made full investigations before acting on complaints filed by members and officers of UFWOC;
5. Encouragement of farmworkers by Rangers to cross picket lines;
6. Intimidation by law enforcement officers of farmworkers taking part in representation elections; and
7. Harassment by Rangers of UFWOC members, organizers, and a representative of the Migrant Ministry of the Texas Council of Churches which gave the appearance of being in sympathy with the growers and packers rather than the impartiality usually expected of law enforcement officers.[6]

The United States Commission on Civil Rights also heard testimony concerning the actions of the Texas Rangers during this labor dispute.[7] In its extensive study, the Commission reported that the Texas Rangers in collusion with local law enforcement officials had purposefully harassed and intimidated union

[6] *U.S. Senate Report, supra* note 4, at 41.

[7] United States Commission on Civil Rights, *Hearing Held in San Antonio, Texas,* 715-45 (1968).

organizers in Starr County in order to break the strike and to deny the strikers their legal rights.[8]

In addition to these official studies and reports, most of the recent Mexican American history texts discuss in detail the partisan involvement of the Texas Rangers.[9] This discriminatory law enforcement follows the historic pattern that continues to victimize the Mexican American throughout the Southwest.[10] It is virtually identical with the treatment of Blacks by law enforcement officials in the Southeast.[11]

MALDEF has litigated numerous suits attacking discriminatory and illegal practices of law enforcement officials affecting the lives and liberties of Mexican Americans and other minorities. With few exceptions, these challenges have been based upon the irreconcilability of such practices with the purpose and spirit of the Constitutional and civil rights of Mexican Americans, including the affirmative remedies afforded by Congress under 42 U.S.C. § 1983 and 28 U.S.C. §§ 2281, 2284. Since the decision of the Court in this litigation may affect the scope of 42 U.S.C.

---

[8]United States Commission on Civil Rights, *Mexican Americans and the Administration of Justice in the Southwest*, 16-17 (1970) [hereinafter cited as *1970 Report*].

[9]L. Grebler, J. W. Moore, and R. C. Guzmán, *The Mexican-American People: The Nation's Second Largest Minority* 532 (1970) [hereinafter cited as *Guzmán*]; *A. B. Rendón, Chicano Manifesto: the History and Aspirations of the Second Largest Minority in America* 220 (Collier 1972) [hereinafter cited as *Rendón*]; R. Acuña, *Occupied America: the Chicano's Struggle Toward Liberation* 41 (Canfield 1972) [hereinafter cited as *Acuña*]; and S. Steiner, *La Raza: the Mexican Americans* (Harper Colophon 1970).

[10]*1970 Report, supra* note 8, at 14-18.

[11]United States Commission on Civil Rights, *Justice* (1961).

§ 1983 and 28 U.S.C. §§ 2281, 2284, MALDEF deems it important to bring to the Court's attention some implications of the significant issues here presented by respectfully praying leave to file brief amicus curiae out of time in support of Appellees' brief.

In the attached brief, MALDEF seeks to provide the Court with a brief historic context of the administration of law enforcement in the Southwest, including that of the Texas Rangers, as it has affected Mexican Americans during labor and other organizing disputes. The brief also argues that the facts in this case clearly justified the district court's intervention as a court of equity. As to the constitutionality of the state laws in question, MALDEF relies entirely on the arguments in the briefs of Appellees and of amicus curiae AFL-CIO.

Dated: November, 1973.

Respectfully submitted,

MARIO G. OBLEDO,
VILMA S. MARTINEZ,
SANFORD JAY ROSEN,
Mexican American Legal Defense
and Educational Fund,
Attorneys for Amicus Curiae.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1972

No. 72-1125

A. Y. ALLEE, et al., *Appellants*

VS.

FRANCISCO MEDRANO, et al., *Appellees.*

On Direct Appeal from the United States Three-Judge District Court for the Southern District of Texas

BRIEF OF AMICUS CURIAE

INTEREST OF AMICUS CURIAE

The interest of the Amicus Curiae is set forth in the foregoing Motion.

ARGUMENT

ESPECIALLY WHEN VIEWED IN HISTORIC CONTEXT, THE FACTS IN THIS CASE DEMONSTRATE THE REQUISITE "BAD FAITH" AND "IRREPARABLE INJURY" TO REQUIRE THE INTERVENTION OF THE FEDERAL COURTS AT EQUITY

This case arises, in part, out of the deployment of Texas Rangers in response to the efforts of Mexi-

can American agricultural workers to organize into a union in order to obtain greater economic benefits for themselves.[12] As the district court has found, once deployed, the Texas Rangers colluded with local police authorities in a studied effort to break the strike and to deny the strikers their civil rights. A primary method employed by these police agencies was discriminatory and bad faith enforcement of various broad and vague state laws. In this brief, amicus curiae will show that such discriminatory and bad faith interferences by law enforcement personnel with the organizational and civil rights of Mexican Americans recur frequently throughout the history of the Southwest.

Ironically, the longest period of contact and conflict which the Mexican American in the United States has had with law enforcement agencies has been with the Texas Rangers who were organized in 1835.[13] During the early years of the Rangers on the southern frontier of Texas, the Rangers

> arrived with instinctive Teutonic directness, preferring the honest smash of the bullet to the subtlety of the knife. But against the Mexican, bluntness turned into brutality. . . .[14]

---

[12]This *amicus curiae* agrees with the arguments already submitted by the Appellees, and amicus curiae AFL-CIO.

[13]*Guzmán* 530.

[14]T. R. Fehrenbach, *Lone Star: A History of Texas and Texans* 473 (1968) [hereinafter cited as *Fehrenbach*].

During the period between the Mexican War[15] and the turn of the century, the areas near the Mexican border were noted for their widespread violence and lawlessness. Although the personal and property rights of Mexican Americans were continually being violated mostly by non-Mexican Americans, they received no protection from law enforcement agencies, including the Texas Rangers.[16]

One specific but representative instance in which Mexican Americans made an effort to organize and protect their property and economic rights against Anglo encroachment and exploitation was the El Paso Salt War of 1878. Their efforts to assert their traditional right of using the salt beds were successfully suppressed by the Texas Rangers.[17]

W. P. Webb, one of the leading Texas historians and past president of the American Historical Association, considered by his peers to be the dean of Texas historians until his death in 1963, wrote the following in his authoritative volume on the Texas Rangers:

> The Texans . . . easily convinced themselves, for example, that the Texas Rangers, knew best how

---

[15]The Texas Rangers also participated in the war with Mexico in 1846-1848. Their involvement moreover included the invasion of Mexico during which they assisted in the fighting. The many war atrocities and wanton acts of cruelty committed by the Texas Rangers in Mexico contributed to the legacy of hatred that remained after United States involvement had terminated. See *Acuña* 26-27.

[16]C. McWilliams, *North From Mexico: the Spanish-Speaking People of the United States* 108-110 (Greenwood Press ed. 1968), [hereinafter cited as *McWilliams*].

[17]*Acuña* 50-52.

> to whip Mexicans. . . . The Texans demanded that the United States should muster the Rangers into federal service, pay them with federal money, and let them run all the Mexicans into the Rio Grande. . . .[18]

The first twenty-five years of this century were a

> part of American history Texans take no pride in, and no one likes. Rangers and local posses, in retaliation for real crimes against American lives and property, committed other crimes. The Rangers, out of tradition, history, and the emotions of the times, "shot first and investigated afterward." This action, serious as the times were, was no longer called for, as dozens of local law enforcement officers later testified.[19]
>
> Between 1915 and 1917, many Rangers . . . waged persecutions. They by no means bore the whole guilt; local citizens and sheriffs, and even the army, shared in it. There were numerous cases of flogging, torture, threatened castration, and legalized murder. Even some of this was justified by events, since the Rangers faced some of the cruelest outlaws who ever lived. But enough of this reprisal fell on people innocent of any crime but the one of being Mexican to discredit the whole.[20]
>
> R. B. Creager of Brownsville, Republican National Committeeman from Texas, testified later that about 200 Mexicans had been executed without trial by Rangers, local officers, and citizens.

---

[18] W. P. Webb, *The Texas Rangers: A Century of Frontier Defense* 127 (University of Texas Press 2d ed. 1965) [hereinafter cited as *Webb*].

[19] *Fehrenbach* 691.

[20] *Fehrenbach* 692.

> He estimated that 90 percent of these had committed no crime. At this time, every male in these counties of Texas went armed with six-shooter or rifle. If an ethnic Mexican were found armed, however, he was sometimes accused of banditry and shot. No record exists of these executions, which were estimated to number between 200 and 5,000, because obviously no records were made or kept. Accounts do exist of the finding of many bodies here and there, and the burial of these.[21]

Many other historians also have pointed out the sad events which occurred during this era:

> The lawlessness became so widespread that Secretary of State Hughes had to warn the governor of Texas that some action would have to be taken to protect Mexicans. . . .
>
> Much of the lawlessness against Mexicans in Texas had an official or semi-official status, for the Texas Rangers had become a kind of "black-and-tan" constabulary bent on terrorizing the Mexican population.[22]
>
> Unknown to most Anglo-Texans who took pride in their famous Rangers, *Rinche* again assumed the proportion of a bugaboo in Spanish-speaking minds. Children were frightened with the term. Almost every lower-class ethnic Mexican alive in those years carried a violent, superstitious fear of Rangers, and the folk-hatred had permeated so deeply into all Mexicans that even third- and

---

[21] *Fehrenbach* 692.
[22] *McWilliams* 113.

> fourth-generation citizens, who had never actually seen a Ranger, reacted with an instinctive phobia toward the name.[23]

Professor Webb, in his definitive history of the Rangers, commented:

> The situation can be summed up by saying that after the troubles developed the Americans instituted a reign of terror against the Mexicans and that many innocent Mexicans were made to suffer . . .
>
> In the orgy of bloodshed that followed, the Texas Rangers played a prominent part, and one of which many members of the force have been heartily ashamed. The reader would not be interested in a list of a hundred or more clashes, raids, murders, and fights that occurred between 1915 and 1920.[24]

The violent acts committed by the Texas Rangers against Mexican Americans finally came to the formal attention of the Texas legislature.

> In 1919, J. T. Canales, state representative from Brownsville, introduced a bill in the legislature to reorganize and upgrade the Ranger force. Canales was a member of an old landowning family; he professed no desire to destroy the Rangers, but to rid them of unqualified and vicious men and to remove the force from politics. An exhaustive investigation ensued, and at the end of it, the Rangers were badly discredited. A bill passed the legislature that in effect abolished the Texas

---

[23] *Fehrenbach* 693.

[24] *Webb* 478.

> Rangers as the principal state police force and sharply reduced their numbers to 76 men.[25]

Notwithstanding the investigation by the legislature and the legislation which ensued, the 1920's and 1930's were similar to the previous eras in which Mexican Americans experienced hostility at the hands of the Texas Rangers.[26] In 1936 law enforcement officials arrested Mexican American pecan shellers in San Antonio who were picketing in protest over a reduction of their wages.

> Workers abandoned 130 plants throughout the West Side of San Antonio. Local law authorities backed management and arrested over 1000 pickets. The charges included blocking the sidewalks, disturbing the peace, unlawful assemblies, etc. "Within the first two weeks tear gas was used at least a half-dozen times to disperse throngs that milled around the shelleries." City officials even dug up an obscure city ordinance aimed at the sign-carrying picketers, which made it "unlawful for any person to carry . . . through any public street . . . any advertising . . ." until a permit had been obtained from the city marshal. It was a ludicrous situation, since the office of city marshal had been abolished some years before. Since the picketers did not have the necessary permit, they were arrested and fined $10. . . . Police Chief Owen Kilday was determined to break the strike. . . .[27]

---

[25] *Fehrenbach* 693. See also *Webb* 513-16 and *Guzmán* 531.

[26] A. J. Rubel, *Across the Tracks: Mexican-Americans in a Texas City* 47 (University of Texas Press ed. 1966) [hereinafter cited as *Rubel*].

[27] *Acuña* 165-66.

In addition to their long history of general harassment and strike breaking directed at the Mexican American people, the Texas Rangers often frustrated Mexican American electoral efforts by breaking up their rallies, physically abusing Mexican American voters, and systematically intimidating and harassing Mexican Americans when they sought to exercise their political rights.[28] In 1963, Mexican Americans in Texas organized themselves politically and successfully asserted their electoral rights in Crystal City, a small agricultural community in the Rio Grande Valley where they constitute a vast majority of the population. For the first time, a significant number of Mexican Americans were elected to the city counsel. However, threats and harassment by the Texas Rangers subsequently contributed to the undermining of this achievement.[29]

Because the actions of the Texas Rangers and the local police officials that have been documented in the case before this Court are so totally consistent with the historic expectations of the Mexican Americans, many Mexican Americans continue to perceive of the Rangers as

> a force which was *designed* to curb and crush any sign of progress or independent action by members of the Mexican-American sociocultural group.[30]

---

[28] *Acuña* 252.
[29] *Guzmán* 563.
[30] *Rubel* 46 (Emphasis in original).

On the other hand, many of the Anglo citizens of Texas view the Rangers and all other police agencies quite differently. In the early 1960's the Anglos erected a monument to the Texas Rangers in Dallas' Love Field. Hence, today

> [w]alking through the airport in Dallas is an insulting experience to a Chicano. In the center of the main lobby, there has been erected the unmistakable semblance of a Texas Ranger. On the pedestal . . . is the inscription: "One riot, one Ranger." The implication is clear.[31]

A similar history of law enforcement misconduct against Mexican American organizational efforts can be found throughout the Southwest.

In California the cantaloupe strike of 1928 by Mexican Americans in the Imperial Valley was broken by the wholesale arrests and deportations by the County Sheriffs.[32] The berry strike of 1933 in El Monte, California, was another unionization effort by Mexican American laborers which failed as a result of law enforcement repression.[33]

During the lettuce strike of 1934 in the Imperial Valley, the Sheriff's office, the local police, and the State Highway Police raided the desert camp of the strikers, burned their shacks, teargassed and forcibly evicted the workers.[34]

> The National Labor Board, when the trouble started in the valley, sent a commission of in-

---

[31] *Rendón* 219-220.

[32] *Acuña* 158.

[33] *Acuña* 160-64.

[34] L. McWilliams, *Factories in the Field* 224 (Peregrine 1971) [hereinafter cited as *Factories*].

> quiry . . . The Commission found that Constitutional rights had been openly disregarded by the law-enforcement agencies in the valley; that the right of free speech and assembly had been wholly suppressed; that excessive bail had been demanded of arrested strikers; that the State Vagrancy Law had been prostituted; and that a Federal Court injunction had been flouted.[35]

During the San Joaquin Valley cotton strike of 1932, the role of the police was that of a force intervening in a partisan manner.

> In this strike Mexicans accounted for approximately three-quarters of the work force. As the strike gained enough support to disrupt the harvest, growers began arming themselves. With deputies at their sides, they evicted strikers from farm labor camps. Local police assured the growers of their right to protect their property and undertook a program to keep the peace by strictly enforcing anti-picketing ordinances and arresting strike agitators. . . .
>
> The subsequent investigations concluded that "without question, civil rights of strikers have been violated." A local under-sheriff revealed the basic assumptions of the law-enforcement forces about local social structure and about their own role: "We protect our farmers here in Kern County. They are our best people. They are always with us. They keep the county going. They put us here and they can put us out again so we serve them. But the Mexicans are trash. They have no standard of living. We herd them like pigs."[36]

---

[35] *Factories* 225.

[36] *Guzmán* 531-32.

Carey McWilliams refers to the series of agricultural strikes throughout California during 1929-1935 in the following manner:

> Beyond question, the strikes of these years are without precedent in the history of labor in the United States. Never before had farm laborers organized on any such scale and never before had they conducted strikes of such magnitude and such far-reaching social significance.[37]

Nevertheless the vast majority of these strikes were unsuccessful due to the mass arrests and beatings of the organizers, the deputization of vigilantes, the mobilization and deployment of National Guard units, the threats of summary deportation, or the physical attacks by special deputies.[38]

In Gallup, New Mexico, the coal strike of 1935 resulted in the declaration of martial law for six months although no violence was recorded; furthermore, some of the labor leaders were arrested and deported to Mexico.[39]

In Arizona, many of the five thousand Mexican workers in the copper mines who went on strike in 1915 were arrested and the National Guard was used to destroy their strike.[40] During the Arizona copper

---

[37] *Factories* 211.

[38] *Factories* 211-29.

[39] *McWilliams* 195. For a recent comprehensive survey of the history of violent interferences with the rights of Mexican Americans by government officials in New Mexico, see C. Knowlton, *Violence in New Mexico: A Sociological Perspective*, 58 Cal. L. Rev. 1054 (1970).

[40] *McWilliams* 197

strike of 1917, more than one thousand strikers were shipped in box cars to Columbus, New Mexico.

> The Columbus officials would not permit them to detrain so they were taken out and dumped in the desert. Investigating the strike some months later for the federal government, Felix Frankfurter reported that "too often there is a glaring inconsistency between our democratic purposes in this war abroad and the autocratic conduct of some at home."[41]

Colorado officials relied upon the assistance of vigilante groups to handle labor disputes in mining areas during the second and third decades of this century.[42]

Mexican Americans also have been victims of summary and abusive treatment inflicted by state law enforcement agencies notwithstanding the existence of labor disputes. One committee of the California Legislature recently convened hearings concerning the relations in general between the police and Mexican Americans in California.[43] Throughout the three days of hearings, this committee was presented with numerous complaints alleging not only the unrestrained and excessive use of force by inadequately trained law enforcement officials but also interference with Mexican American organizational efforts.

---

[41] *McWilliams* 197.

[42] *Guzmán* 531.

[43] *Hearings on Relations Between the Police and Mexican Americans Before the California Assembly Select Committee on the Administration of Justice* (1972). See also, A. Morales, *Ando Sangrando . . . I Am Bleeding* (Perspectiva 1972); *Police-Community Relations in East Los Angeles, California: A Report of the California State Advisory Committee to the United States Commission on Civil Rights* (1970); *1970 Report;* and *Guzmán.*

Numerous and similarly blatant interferences by law enforcement agencies with Mexican American political and economic organizational efforts during the 1960's also have been documented throughout the Southwest.[44] The recent and most widely known interferences have occurred during the California grape strike of 1968[45] and the current lettuce strike and boycott.

When the facts in the instant case, as specifically found by the district court (347 F. Supp. 605, 611-618 (S.D. Tex. 1972)), are considered by themselves, it is clear that a proper occasion has been presented for the intervention of the equitable power of the federal courts. When these facts are considered in the more general historic context, the district court's obligation to intervene becomes compelling.

The facts in the instant case are so well documented as to place the district court's findings beyond any possibility of reversal on the ground that they were "clearly erroneous." Rule 52, Fed. Rules of Civ. Proc. Aside from the issue of the constitutionality of the state laws in question, the only issue before this Court, therefore, is whether the proven facts justify a federal court's issuing an injunction against enforcement of the state laws in question. And the only basis for any one to doubt at all the propriety of a federal court injunction in this case, is this Court's recent decisions in *Younger v. Harris,* 401 U.S. 37 (1971), and its companion cases. In those decisions the Court

---

[44] *1970 Report supra* note 8, at 14-18.

[45] *Guzmán* 532.

ruled that when a state criminal prosecution is pending, the possible facial unconstitutionality of the state statute, pursuant to which the prosecution is progressing, is not sufficient by itself to justify a federal court injunction, against good-faith enforcement of the statute, in a federal civil rights action brought by the criminal defendant after the state prosecution has commenced.

As the district court observed below: "*Younger* is not an abdication of the federal role in protecting citizens from 'official lawlessness.'" 347 F. Supp. at 610. It is a decision based on comity, whereby this Court simply recognized that in the ordinary course of events, each person must rely upon the usual state criminal processes to vindicate his or her constitutional claim. That this principle has no application to instances of massive official lawlessness like those found by the district court in the instant case, is demonstrated by the fact that, in *Younger,* this Court specifically concluded that its rule of comity was a function of the equitable principle that in order to secure an injunction a party had to demonstrate an "irreparable injury."

The inconvenience a criminal defendant may suffer from prosecution under an unconstitutional state law, does not amount to an irreparable injury that cannot be "remedied at law." Hence, when federal court plaintiffs seek to enjoin state criminal prosecutions, according to the Court, they may prove irreparable injury by demonstrating that the state officials are engaging in "bad faith prosecution and harassment."

401 U.S. at 49, 53. (Other possible proofs are discussed at 401 U.S. at 53-54.)

If the record in the instant case, as illuminated by the district court's findings, does not demonstrate the requisite "bad faith prosecution and harassment," amicus curiae submits that no record can meet that standard. Indeed, this case is a nearly perfect analogy to *Dombrowski v. Pfister,* 380 U.S. 479 (1965), which this Court reaffirmed in *Younger,* and used to illustrate application of the "bad faith" standard. *Younger,* 401 U.S. at 47-53.

Most notably, in two essential respects the circumstances of the instant case are exactly like those in *Dombrowski* and unlike those in *Cameron v. Johnson,* 390 U.S. 611 (1968), which was relied upon by the Appellants. See Brief of Appellants, 38-41. First, in *Cameron,* all arrests were followed by prosecutions uninterrupted by state authorities. In *Dombrowski,* the arrests were so patently unconstitutional that

> . . . a state judge quashed the arrest warrants as not based on probable cause and discharged the appellants. Subsequently, the court granted a motion to suppress the seized evidence on the ground that the raid was illegal. Louisiana officials continued, however, to threaten prosecution of the appellants. . . .

Dombrowski, 380 U.S. at 488. In the instant case, no state court took such courageous steps.[46] However, the district court found that arrests frequently were

---

[46] *Cf.,* Acuña 166, discussing the Texas state courts' failure to protect the Mexican American pecan shellers from the San Antonio police chief's unlawful interference with their pickets.

> . . . followed by release without the filing of charges [thus] prevent[ing] those arrested from asserting their constitutional rights in defense of their conduct and obtaining a review of the state law. Similarly the dispersal of pickets under the threat of arrest effectively prevent[ed] a test of the state law and a review of their conduct and that of the police.

347 F. Supp. at 618. Such acts clearly render persons desiring a clarification of their constitutional rights without an adequate remedy at state law and evinced bad faith conduct by police authorities. *Cf., Hague v. C.I.O.*, 101 F.2d 774, 778 (3d Cir.), aff'd, 307 U.S. 496 (1939).

The second parallel between the instant case and *Dombrowski* pertains to the fact that in both cases the actions by the federal court defendants were continuous and general. In other words, their actions, including arrests and threats of arrest, were not limited to any particular circumstances and they were not responsive to any particularized actions of the plaintiffs. They constituted general harassment and an on-going threat. Further, in *Dombrowski,* the plaintiffs labored under a continuous threat of prosecution and harassment pursuant, as this Court ruled, to facially unconstitutionally broad and vague state subversion statutes. *Dombrowski,* 380 U.S. at 492-96. Similarly, in the instant case, the plaintiffs labored under a continuous threat of prosecution and harassment pursuant, as the district court correctly held, to a network of facially unconstitutionally broad and vague state picketing, obstructing the streets, breach

of the peace and unlawful assembly statutes. 347 F. Supp. at 620-634. By contrast, in *Cameron* only the Mississippi anti-picketing statute was involved, the arrests and prosecutions were limited to a single occasion, and they were in response to "picketing" that was clearly unlawful under the terms of the statute. *Cameron,* 390 U.S. at 614-15. Further, the district court in that case declared that the statute was not facially unconstitutional, and this Court affirmed. *Cameron,* 390 U.S. at 615-17.

CONCLUSION

The judgment below should be affirmed in all respects. The district court correctly entertained jurisdiction in the instant case. And for the reasons stated in the briefs of the Appellees and the AFL-CIO, the challenged statutes were properly declared unconstitutional, and their enforcement was enjoined.

Dated: November, 1973.

Respectfully submitted,

MARIO G. OBLEDO,
VILMA S. MARTINEZ,
SANFORD JAY ROSEN,
Mexican American Legal Defense
and Educational Fund,
Attorneys for Amicus Curiae.

ALLEE ET AL. *v.* MEDRANO ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

No. 72–1125. Argued November 13, 1973—Decided May 20, 1974

Appellee union committee and the individual appellees, who attempted from June 1966 to June 1967 to unionize farmworkers and persuade them to support or join a strike, were subjected to persistent harassment and violence by appellants and other law enforcement officers. In July 1967 a state court issued a temporary injunction against appellees, proscribing picketing on or near property of one of the major employers in the area. Appellees brought this federal civil rights action, 42 U. S. C. §§ 1983, 1985, attacking the constitutionality of certain Texas statutes and alleging that appellants and the other officers conspired to deprive appellees of their First and Fourteenth Amendment rights. A three-judge District Court declared five of the statutes unconstitutional and enjoined their enforcement, and in addition permanently enjoined appellants and the other officers from intimidating appellees in their organizational efforts. *Held:*

1. The state court injunction did not moot the controversy, since it was the appellants' and the other officers' conduct, not the injunction, that ended the strike. Nor has the case become moot because appellees abandoned their unionization efforts as a result of the harassment, for appellee union still is a live organization with a continuing goal of unionizing farmworkers. Pp. 809–811.

2. The portion of the District Court's decree enjoining police intimidation of the appellees was an appropriate exercise of the court's equitable powers. Pp. 811–816.

(a) The three-judge court could properly consider the question of police harassment under concededly constitutional statutes and grant relief in the exercise of jurisdiction ancillary to that conferred by the constitutional attack on the statutes that plainly required a three-judge court. Pp. 811–812.

(b) This portion of the decree did not interfere with pending state prosecutions, so that special considerations relevant to cases like *Younger* v. *Harris*, 401 U. S. 37, do not apply, nor was there any requirement that appellees first exhaust state remedies before bringing their federal suit. P. 814.

(c) Irreparable injury was shown as evidenced by the District Court's unchallenged findings of police intimidation, and no remedy at law would adequately protect appellees from such intimidation in their lawful effort to unionize the farmworkers. Pp. 814–815.

(d) Where there is a persistent pattern of police misconduct, as opposed to isolated incidents, injunctive relief is appropriate. *Hague* v. *CIO*, 307 U. S. 496. Pp. 815–816.

3. The portion of the District Court's decree holding five of the state statutes unconstitutional with accompanying injunctive relief must be vacated. Pp. 816–820.

(a) Where three of the statutes have been repealed and replaced by more narrowly drawn provisions since the District Court's decision and there are no pending prosecutions under them, the judgment relating to these statutes will have become moot. Since it cannot be definitely determined from the District Court's opinion or the record whether there are pending prosecutions or even whether the District Court intended to enjoin them if there were, the case is remanded for further findings. If there are no pending prosecutions, the court should vacate the judgment as to the superseded statutes. If some are pending, the court should make findings as to whether they were brought in bad faith, and, if so, enter an appropriate decree subject to review both as to the propriety of federal court intervention and as to the merits of any holding striking down the statutes. Pp. 818–820.

(b) The case is remanded for a determination as to whether there are pending prosecutions under the two remaining statutes, and for further findings and reconsideration in light of *Steffel* v. *Thompson*, 415 U. S. 452. If there are pending prosecutions, the court should determine whether they were brought in bad faith. If there are only threatened prosecutions and only declaratory relief is sought, then *Steffel* controls and no *Younger* showing need be made. P. 820.

347 F. Supp. 605, affirmed in part, vacated in part, and remanded.

DOUGLAS, J., delivered the opinion of the Court, in which BRENNAN, STEWART, MARSHALL, and BLACKMUN, JJ., joined. BURGER, C. J., filed an opinion concurring in the result in part and dissenting in part, in which WHITE and REHNQUIST, JJ., joined, *post*, p. 821. POWELL, J., took no part in the decision of the case.

Larry F. York, First Assistant Attorney General of Texas, argued the cause for appellants. With him on

the brief were *John L. Hill*, Attorney General, and *Joe B. Dibrell*, *Lang A. Baker*, and *Gilbert J. Pena*, Assistant Attorneys General.

Chris Dixie argued the cause and filed a brief for appellees.*

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a civil rights action,[1] 42 U. S. C. §§ 1983, 1985, attacking the constitutionality of certain Texas statutes, brought by appellees. It alleges that the defendants, members of the Texas Rangers and the Starr County, Texas, Sheriff's Department, and a Justice of the Peace in Starr County, conspired to deprive appellees of their rights under the First and Fourteenth Amendments, by unlawfully arresting, detaining, and confining them without due process and without legal justification, and by unlawfully threatening, harassing, coercing, and physically assaulting them to prevent their exercise of the rights of free speech and assembly. A three-judge court was convened which declared five Texas statutes unconstitutional and enjoined their enforcement. 347 F. Supp. 605, 634. In addition, the court permanently enjoined the defendants from a variety of unlawful practices which formed the core of the alleged conspiracy. Five defendants, all members of the Texas Rangers, have perfected this appeal. 28 U. S. C. § 1253. The appellees

**John B. Abercrombie* and *William D. Deakins, Jr.*, filed a brief for Brown & Root, Inc., et al. as *amici curiae* urging reversal.

J. Albert Woll, *Laurence Gold*, and *Thomas E. Harris* filed a brief for the American Federation of Labor and Congress of Industrial Organizations as *amicus curiae* urging affirmance.

[1] Jurisdiction in the District Court was based upon 28 U. S. C. § 1343, and a three-judge court was properly convened under 28 U. S. C. § 2281.

consist of the United Farm Workers Organizing Committee, certain named plaintiffs,[2] and the class they represented in the District Court on whose behalf the judgment was also rendered.[3]

From June 1966 until June 1967, the appellees were engaged in an effort to organize into the union the predominantly Mexican-American farmworkers of the lower Rio Grande Valley. This effort led to considerable local controversy which brought appellees into conflict with the state and local authorities, and the District Court found that as a result of the unlawful practices enjoined below the organizing efforts were crushed. This lawsuit followed.

The factual findings of the District Court are not challenged here. In early June 1966, at the beginning of the organizing effort, Eugene Nelson, one of the strikers' principal leaders, stationed himself at the International Bridge in Roma, Texas, attempting to persuade laborers from Mexico to support the strike. He was taken into custody by the Starr County Sheriff, detained for four hours, questioned about the strike, and was told he was under investigation by the Federal Bureau of

---

[2] Named in the caption were Francisco Medrano, Kathy Baker, David Lopez, Gilbert Padilla, Magdaleno Dimas, and Benjamin Rodriguez. Other individual plaintiffs were named in the body of the complaint.

[3] The judgment was also rendered for all members of the plaintiff United Farmworkers Organizing Committee, AFL–CIO, and "all other persons who because of their sympathy for or voluntary support of the aims of said Plaintiff union have engaged in, are engaging in, or may hereafter engage in peaceful picketing, peaceful assembly, or other organizational activities of or in support of said Plaintiff union or who may engage in concert of action with one or more of Plaintiffs for the solicitation of agricultural workers or others to join or make common cause with them in matters pertaining to the work and labor of agricultural workers."

Investigation. No charges were ever filed against him. 347 F. Supp., at 612.

In October 1966, about 25 union members and sympathizers picketed alongside the Rancho Grande Farms exhorting the laborers to join the strike; they were ordered to disperse by the sheriffs although their picketing was peaceful. When Raymond Chandler, one of the union leaders, engaged an officer in conversation contesting the validity of the order, he was arrested under Art. 474 of the Texas Penal Code for breach of the peace. Although the maximum punishment for this offense is a $200 fine, bond was set for Chandler at $500. When two of Chandler's friends came to the courthouse to make bond, they were verbally abused, told they had no business there, and that if they did not leave they would be placed in jail themselves. 347 F. Supp., at 612–613. They left.[4]

Later that month, when the president of the local union and others were in the courthouse under arrest, they shouted "viva la huelga" in support of the strike. A deputy sheriff struck the union official and held a gun at his forehead, ordering him not to repeat those words in the courthouse because it was a "respectful place." *Id.*, at 613. As the strike continued through the year and the Texas Rangers were called in to the local area, there were more serious incidents of violence. In May 1967 some union pickets gathered in Mission, Texas, to protest the carrying of produce from the valley on the Missouri-Pacific Railroad. They were initially charged with trespass on private property; this was changed to unlawful assembly, and finally was superseded by complaints of secondary picketing. The Reverend Edgar

[4] This was not the only abuse of the bonding process. Later when Eugene Nelson was arrested for threatening the life of a Texas Ranger, see *infra*, at 807, the deputy sheriff rejected for no valid reason a bond he knew was good.

Krueger and Magdeleno Dimas were taken into custody by the Rangers. As another train passed, the Rangers held these two prisoners' bodies so that their faces were only inches from the train. 347 F. Supp., at 615.

A few weeks later the Rangers sought to arrest Dimas for allegedly brandishing a gun in a threatening manner, and found him by "tailing" Chandler and Moreno, also union members. Chandler was arrested with no explanation as was Moreno, who was also assaulted by Captain Allee at the time. These two men were later charged with assisting Dimas to evade arrest, although by Allee's own testimony they were never told Dimas was sought by the Rangers. Indeed, because the officers had no arrest warrant or formal complaint against Dimas, they could not then arrest him, so they put in a call to a justice of the peace who arrived on the scene and filled out a warrant on forms he carried with him. The Rangers then broke into the house and arrested Dimas and Rodriguez, another union member, in a violent and brutal fashion. Dimas was hospitalized four days with a brain concussion, and X-rays revealed that he had been struck so hard on the back that his spine was curved out of shape. Rodriguez had cuts and bruises on his ear, elbow, upper arm, back, and jaw; one of his fingers was broken and the nail torn off. *Id.*, at 616–617.

Earlier, in May, Nelson had gone down to the Sheriff's office, according to appellees, to complain that the Rangers were acting as a private police force for one of the farms in the area. The three-judge District Court found that Nelson was then arrested and charged with threatening the life of certain Texas Rangers, despite the fact that Captain Allee conceded there was no serious threat. Allee had directed that the charges be filed to protect the Rangers from censure if something happened to Nelson. *Id.*, at 615.

During this entire period the Starr County Sheriff's office regularly distributed an aggressive anti-union newspaper. A deputy driving an official car would pick up the papers each week and bring them back to the Sheriff's office; they would then be distributed by various deputies. *Id.*, at 617. The District Court included copies of the paper in an appendix to its opinion; a typical headline was "Only Mexican Subversive Group Could Sympathize with Valley Farm Workers." The views of the Texas Rangers were similarly explicit. On a number of occasions they offered farm jobs to the union leaders, at the union demand wage, in return for an end to the strike. *Id.*, at 613, 614. The Rangers told one union member that they had been called into the area to break the strike and would not leave until they had done so. *Id.*, at 613.

Among other findings of the three-judge District Court were that the defendants selectively enforced the unlawful assembly law, Art. 439 of the Texas Penal Code, treating as criminal an inoffensive union gathering, 347 F. Supp., at 613; solicited criminal complaints against appellees from persons with no knowledge of the alleged offense, *id.*, at 615; and filed baseless charges against one appellee for impersonating an officer.[5]

The three-judge District Court found that the law enforcement officials "took sides in what was essentially a labor-management controversy." *Id.*, at 618. Although there was virtually no evidence of assault upon

[5] Deputy Paul Pena filed these charges against Reynaldo De La Cruz although Pena had never seen the offense, which was wearing a badge around the union hall. The badge in question was shield type, while those worn by the officers were of the star type, and Pena conceded that he knew that De La Cruz and Dimas had worn similar badges when directing traffic at union functions. 347 F. Supp., at 616.

anyone by union people during the strike, the officials "concluded that the maintenance of law and order was inextricably bound to preventing the success of the strike." *Ibid.* Thus, these were not a series of isolated incidents but a prevailing pattern throughout the controversy.

I

It is argued that a state injunction [6] against the appellees, issued on July 11, 1967, ended the strike and thus rendered the controversy moot. That is not the case.

After summarizing the defendants' unlawful practices, the District Court concluded that "[t]he union's efforts collapsed under this pressure in June of 1967 and this suit was filed in an effort to seek relief." *Ibid.* Thus it was the defendants' conduct, which is the subject of this suit, that ended the strike, not the state court injunction, which came afterward. With the protection of the federal court decree, appellees could again begin their efforts.

Moreover, the state court injunction is quite limited. It proscribes picketing by the appellees and those acting in concert with them only on or near property owned by La Casita Farms, Inc., the plaintiff in the state case. But the appellants agreed at oral argument that La Casita is *only one of the major employers in the area*, and some of the incidents involved occurred at other locations. Moreover the state court injunction was only temporary, and on appeal the Texas Court of Civil Appeals, after finding that most of the trial court findings were unsupported, affirmed only because of the limited nature of review, under Texas law, of a temporary injunction. The appellate court concluded that "nothing in this

[6] *La Casita Farms, Inc.* v. *United Farm Workers Organizing Comm.*, Dist. Ct. of Starr County, Texas, No. 3809, July 11, 1967. Appellants' exhibit D–1 in the District Court.